IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 5437 of 2003(D)

CRRP.14/2002 of ADDL. SESSIONS COURT (ADHOC)-II, ALAPPUZHA
MC.13/2001 of CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA

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PETITIONER: REV. PETITIONER/CR. PETITIONER

V.N.MADHUKUMAR S/O. NARAYANAN ACHARI,
VENKIDAYIL VEEDU, KODUPUNNA, URUKKARI P.O.,
ALAPPUZHA.

BY ADV. SRI.M.D.SASIKUMARAN
SRI.K.S.HARIHARAPUTHRAN
SRI.P.J.JOSEPH
SRI.GEORGE MATHEW
SRI.T.RAJEEV

RESPONDENTS: RESPONDENTS/PETITIONERS AND STATE

1. AJITHA D/O. BHASKARAN ACHARI,
VADAKKEPARAMBU, MANANCHERY P.O., ALAPPUZHA.

2. MANU S/O. V.N.MADHUKUMAR, VADAKKEPARAMBU
MANNANCHERI P.O., ALAPPUZHA (MINOR)

3. ANOOP S/O. V.N.MADHUKUMAR,
VADAKKEPARAMBU, MANNANCHERI P.O., ALAPPUZHA (MINOR)

4. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY ADV. SRI.RAJU K.MATHEWS
SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23/11/2006,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 5437 OF 2003

Dated this the 23rd day of November 2006

ORDER

The petitioner, who is the counter petitioner in M.C. No. 13/2001 and the Revision Petitioner in Crl. Rev. Ptn. No. 14/2002, has sought for setting aside the orders of the court below specifically on the ground that in OP(HMA) 37/2000 vide Annexure 3 the Additional Subordinate Judge has ordered dissolution of the marriage on the ground of adultery. As per the orders of the court below vide Annexure A1 and A2 in the M.C. and in the Revision petition filed in the same, the petitioner is under orders to pay Rs. 500/- each to the first respondent and the children. It is submitted that he has already paid maintenance to the children as ordered by the court below. All the same he has challenged the same also. The counsel has relied on the decision reported in **V.M. Shah v. State of Maharashtra** (1995 (5) SCC 767) that the decree of the civil court will get precedence over the findings of the criminal court.

It is also observed in the above cited decision that the pendency of the appeal does not have the effect of suspending the operation of the decree of the trial court and that it does not become inoperative. It is submitted by the counsel for the first respondent that an appeal is pending as A.S. 44/2003 over the decision of the Additional Sub Judge, in OP(HMA) 37/2000.

2.The contention of the petitioner herein is that the respondent is adultery and that he is not liable to pay maintenance in view of section 125 (4) the Cr.P.C. the same was rejected in M.C. 13/2001 and in Crl. Revision Petition No. 14/2002. In view of the fact that in OP 37/2002 the above contention has been upheld and decree for dissolution granted the granted matter would warrant reconsideration of the orders in the maintenance case and in the CRP. So far as the order of maintenance granted to the children are concerned, I find no interference is called for. So far as the maintenance granted to the first petitioner is concerned, the same is liable to be set aside. The above matter requires reconsideration. Hence the orders of the court below in M.C. 13/2001 and Crl. Rev. Ptn. No.

14/2002, so far as the first petitioner in the M.C. is concerned, is set aside and the matter is remitted back to the court of Chief Judicial Magistrate, Alappuzha for reconsideration. The parties may be permitted to adduce further evidence in the matter and the case is to be disposed of on merits. The parties shall appear before the court of Chief Judicial Magistrate, Alappuzha on 15.12.2006.

The Crl. M.C is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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